From: LERS, EOIR (EOIR)
To: LERS, EOIR (EOIR); All of Judges (EOIR); BIA BOARD MEMBERS (EOIR); BIA ATTORNEYS (EOIR); All of OCIJ JLC (EOIR); Alder Reid, Lauren (EOIR); Allen, Patricia M. (EOIR); Baptista, Christina (EOIR); Bauder, Melissa (EOIR); Berkeley, Nathan (EOIR); BIA TEAM JLC; BIA TEAM P (EOIR); Brazill, Caitlin (EOIR); Burgie, Brea (EOIR); Burgus, Elizabeth (EOIR); Cicchini, Daniel (EOIR); Cowles, Jon (EOIR); Curry, Michelle (EOIR); Evans, Brianna (EOIR); Grodin, Edward (EOIR); Hartman, Alexander (EOIR); Kaplan, Matthew (EOIR); King, Jean (EOIR); Korniluk, Artur (EOIR); Lang, Steven (EOIR); Lovejoy, Erin (EOIR); Martinez, Casey L. (EOIR); Noferi, Mark (EOIR); Park, Jeannie (EOIR); Powell, Karen B. (EOIR); Ramirez, Sergio (EOIR); Rimmer, Phillip (EOIR); Robbins, Laura (EOIR); Rodrigues, Paul A. (EOIR); Rodriguez, Bernardo (EOIR); Rothwarf, Marta (EOIR); Sanders, John W. (EOIR); Schaaf, Joseph R. (EOIR); Stutman, Robin M. (EOIR); Swanwick, Daniel (EOIR); Taufa, Elizabeth (EOIR); Vayo, Elizabeth (EOIR); Wilson, Amelia (EOIR)
Cc: McHenry, James (EOIR); Reilly, Katherine (EOIR); Santoro, Christopher A (EOIR); Sheehey, Kate (EOIR); Moutinho, Deborah (EOIR); Adams, Amanda (EOIR); Pease, Jeffrey (EOIR); Morgan, Kenosha (EOIR); Macri, Andrea (EOIR); EOIR Library (EOIR)
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Office of Policy | Legal Education and Research Services Division

Policy & Case Law Bulletin
May 25, 2018

Federal Agencies

DOJ

- BIA Issues Decision in Matter of Ding — EOIR

  27 I&N Dec. 295 (BIA 2018)

  (1) The term "prostitution" in section 101(a)(43)(K)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(43)(K)(i) (2012), which provides that an offense relating to the owning, controlling, managing, or supervising of a prostitution business is an aggravated felony, is not limited to offenses involving sexual intercourse but is defined as engaging in, or agreeing or offering to engage in, sexual conduct for anything of value. (2) The offense of keeping a place of prostitution in violation of section 944.34(1) of the Wisconsin Statutes is categorically an aggravated felony under section 101(a)(43)(K)(i) of the Act.

- OCAHO Issues Decision in Verdesi v. Ark Rustic Inn, LLC — EOIR

  13 OCAHO no. 1311

  The court found that the complainant, who did not apply for naturalization within six months of first becoming eligible, is not a "protected individual" as defined in 8 U.S.C. § 1324b(a)(3), and thus is not eligible to assert citizenship status discrimination claims under 8 U.S.C. § 1324b(a)(1) or document abuse claims under 8 U.S.C. § 1324b(a)(6).

- Reminder Regarding Matter of Castro-Tum — EOIR

  27 I&N Dec. 271 (A.G. 2018)

  Questions have arisen about the scope of the Attorney General's recent decision in Matter of Castro-Tum, 27 I&N Dec. 271 (A.G. 2018), as it relates to administrative closure generally and cases in which a respondent is or will be seeking a provisional unlawful presence waiver via Form I-601A. With respect to when administrative closure is permissible, the Attorney General held that "there is no general authority" for immigration judges or the BIA to administratively close cases. They may do so only when "Department of Justice regulations . . . permit administrative closure in specific categories of cases." Castro-Tum, 27 I&N Dec. at 274. A summary of those categories of cases appears in

section I(B) of Castro-Tum, 27 I&N Dec. at 276-78. With respect to applications for I-601A waivers, adjudicators should consult footnotes 3 and 9 of Castro-Tum, 27 I&N Dec. at 278, 287, which directly address this point and explain that "[r]egulations that apply only to DHS do not provide authorization for an immigration judge or the Board to administratively close or terminate an immigration proceeding," and the DHS regulation regarding processing Form I-601A waiver applications "cannot be an independent source of authority for administrative closure." If you have additional questions, please contact your supervisor.

- Virtual Law Library Weekly Update — EOIR

  This update includes resources recently added to EOIR's internal or external Virtual Law Library, such as Federal Register Notices, country conditions information, and links to recently-updated immigration law publications.

DHS

- USCIS Announces Policy Manual Update Regarding CSPA

  On May 23, 2018, USCIS announced an update to its policy manual regarding the Child Status Protection Act (CSPA), replacing certain guidance contained in the Adjudicator's Field Manual (AFM).

DOS

- DOS Designates ISIS in the Greater Sahara as SDGT and FTO

  On May 23, 2018, DOS designated ISIS in the Greater Sahara (ISIS–GS, and various aliases) as a Specially Designated Global Terrorist (SDGT) under the Act and a Foreign Terrorist Organization (FTO) under Executive Order 13224.

Supreme Court

CERT. DENIED

- Demirchyan v. Sessions

  No. 17-1135, 2018 U.S. LEXIS 3105 (May 21, 2018)

  Questions Presented: (1) Whether an appellate court maintains independent de novo review over a district court's citizenship determination, after a transfer pursuant to 8 U.S.C. § 1252(b)(5)(B), or whether instead the deferential "clear error" rule applies. (2) Whether due to the national importance implicated by stripping a person of his or her U.S. citizenship, evidenced by two . . . previously issued U.S. passports, and the impending physical deportation of the Petitioner, the government should have been held to its ultimate burden of proving removability by clear and convincing evidence, or whether instead the burden is on the person facing removal. (3) Whether this Court's review is warranted to resolve a split in the circuits created by the Ninth Circuit's treatment of Federal Rule of Evidence 609(b), which prohibits consideration of a criminal conviction more than 10 years old for purposes of credibility, unless the trial court has balanced its probative value versus prejudicial effect.

Second Circuit

- Hechavarria v. Sessions

  No. 16-1380, 2018 WL 2306595 (2d Cir. May 22, 2018) (amended decision) (Bond)

  The Second Circuit concluded that criminal aliens who have exhausted their options for administrative review but also have a stay pending resolution of their appeals in the Second Circuit are not held pursuant to 8 U.S.C. § 1231(a) because they are not in the "removal period" contemplated by statute until their appeals are resolved by the Second

Circuit, and instead are detained pursuant to 8 U.S.C. § 1226(c).

- Zheng v. Sessions

  No. 14-4350, 2018 WL 2277380 (2d Cir. May 18, 2018) (unpublished) (Credibility)

  The Second Circuit granted the PFR and remanded, concluding that the record did not support the agency's determination that Zheng's testimony was inconsistent as to the number of beatings he suffered or visits he received from family planning officials and police officers regarding his religious practice. The court also highlighted that the omission of any mention of police visits in Zheng's father's letter was insufficient alone to sustain the agency's adverse credibility determination given the lack of support for other inconsistency findings and the agency's obligation "to evaluate inconsistencies in light of the 'totality of the circumstances.'" Xiu Xia Lin v. Mukasey, 534 F.3d 162, 165 (2d Cir. 2008) (quoting 8 U.S.C. § 1158(b)(1)(B)(iii)).

- Yan Qing Yu v. Sessions

  No. 16-3780-AG, 2018 WL 2278191 (2d Cir. May 18, 2018) (unpublished) (Corroboration)

  The Second Circuit granted the PFR and remanded, concluding that the Immigration Judge did not adequately evaluate corroborating evidence submitted by Yu and erroneously found that Yu testified that she did not submit documents relating to her arrest because it would have been "futile" to obtain such documents from the police. The court also concluded that the Board improperly made an implicit finding of fact which Yu did not have an opportunity to explain when it affirmed the Immigration Judge's decision, in part, based on Yu's failure to provide corroboration in the form of "statements from persons who were arrested with her" even though the record did not show that the Immigration Judge found such statements to be available.

Fifth Circuit

- Shroff v. Sessions

  No. 17-60042, 2018 WL 2222659 (5th Cir. May 15, 2018) (Aggravated Felony)

  The Fifth Circuit granted the PFR, concluding that online solicitation of a minor in violation of Texas Penal Code § 33.021(c) does not qualify as a sexual abuse of a minor aggravated felony. The Texas statute defines minor as an individual under the age of seventeen, or an individual whom the actor believes to be under the age of seventeen. The court concluded that the Supreme Court's ruling in Esquivel-Quintana v. Sessions, 137 S. Ct. 1562 (2017), although in the context of statutory rape, is applicable in the context of online solicitation of a minor, and thus establishes an age threshold of under sixteen that renders the Texas statute overbroad.

Seventh Circuit

- Ramos-Braga v. Sessions

  No. 17-1998, 2018 WL 2296583 (7th Cir. May 21, 2018) (MTR; Ineffective Assistance of Counsel; Asylum-General)

  The Seventh Circuit denied the PFR, concluding that the Board did not abuse its discretion in denying Ramos-Braga's second motion to reopen as untimely and numerically barred, despite his arguments for equitable tolling based on ineffective assistance of counsel and changed country conditions in Brazil. Specifically, the court determined that Ramos-Braga did not establish that he acted diligently when he discovered his former attorney's ineffective assistance, or that he was prejudiced by his former attorney's errors regarding his applications for special-rule cancellation of removal and withholding of removal and protection under the CAT.

Eighth Circuit

- United States v. McGee

  No. 17-2080, 2018 WL 2271079 (8th Cir. May 18, 2018) (Aggravated Felony)

  The Eighth Circuit concluded that Iowa's Assault statute is divisible because statutory alternatives carry different punishments, and that Assault While Displaying a Dangerous Weapon under Iowa Code §§ 708.1 & 708.2(3) categorically qualifies as a "threatened use of physical force" under U.S.S.G. § 4B1.2(a)(1), which is analogous to 18 U.S.C. § 16(a).

Ninth Circuit

- Kudryashov v. Sessions

  No. 15-71381, 2018 WL 2250417 (9th Cir. May 17, 2018) (unpublished) (Credibility)

  The Ninth Circuit granted the PFR and remanded, concluding that "many of the reasons the Agency gave for finding Kudryashov not credible were based on trivial differences between his testimony and other evidence in the record, and are not sufficient to support an adverse credibility finding." Specifically, the court highlighted minor discrepancies in dates of past events, Kudryashov's inability to remember the name of a medication he took six years prior called "Nootropil," and his inability to remember the name and complete street address of a prosecutor he met.

- Flores v. Sessions

  No. 16-73010, 2018 WL 2244732 (9th Cir. May 16, 2018) (unpublished) (Asylum-General)

  The Ninth Circuit granted the PFR in part and remanded, concluding that although the Board addressed Flores's sexual orientation, it erred by not addressing the effect of her transgender identity as to her claims for asylum, withholding of removal, and CAT protection.